

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

DESEAN LAMONT THOMAS,

Case No. 16cv-1049-JRT-KMM

Plaintiff,

v.

REPORT AND
RECOMMENDATION

JAMES BZOSKIE,

Defendant.

Plaintiff DeSean Lamont Thomas, a prisoner, did not pay the required filing fee for this case, but instead applied for leave to proceed *in forma pauperis*. See ECF No. 2. In an order dated May 10, 2016, Magistrate Judge Hildy Bowbeer noted that Thomas had not submitted sufficient financial information for the Court to calculate his initial partial filing fee. See ECF No. 3 (citing 28 U.S.C. § 1915(b)). Thomas was given 20 days to provide the required financial information, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. See Fed. R. Civ. P. 41(b).

That deadline has now passed, and Thomas has not submitted the required financial information.¹ Accordingly, this Court now recommends, in accordance with

¹Judge Bowbeer noted in the order requiring that Thomas submit further financial information that, in lieu of prosecuting this action, Thomas might be better served by filing a motion to amend his complaint in a proceeding he previously initiated against defendant James Bzoskie. See *Thomas v. Bzoskie*, No. 15-CV-2197

Judge Bowbeer's prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: June 2, 2016

s/ Katherine Menendez

Katherine Menendez
United States Magistrate Judge

(JRT/KMM) (D. Minn. filed Apr. 29, 2015). In that case, Thomas filed a notice that he intended to seek leave to amend his complaint. On May 31, 2016, Thomas filed a motion to amend in which he explains that. In his motion to amend Thomas indicates that he filed this case in an attempt to resolve the pleading deficiencies identified in the earlier proceeding. *See id.*, ECF No. 83, Mot. to Am. Compl. at 2 (citing Judge Bowbeer's May 10, 2016 order indicating that Thomas may file a motion to amend his complaint in the original proceeding). Thus, it appears Thomas no longer intends to prosecute this action.

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.